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Federal Communications Commission
Office of Secretary

Office of the General Counsel
U.S. Department of Homeland Security
Washington, DC 20528



Homeland
Security

05-212

June 13, 2005

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
FEDERAL COMMUNICATIONS COMMISSION
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E., Suite 110
Washington, D.C. 20002

Re: Petition of Verizon Wireless for Waiver of Section 64.402 of the
Commission's Rules filed May 13, 2005

Dear Madam Secretary:

On behalf of the Secretary of Homeland Security, Executive Agent of the National Communications System ("NCS"), I enclose herewith for filing an original and four (4) copies of the NCS' *Statement in Support* of the above-referenced Petition for Waiver.

Please stamp and return to this office the enclosed copy of this filing designated for that purpose. Kindly direct any questions concerning this material to the undersigned.

Respectfully submitted,

Eric T. Werner

Enclosures

cc: Robert B. Stephan, Assistant Secretary for Infrastructure Protection
Dr. Peter M. Fonash, Deputy Manager, NCS
Petitioner's counsel

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Federal Communications Commission
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In the Matter of:)
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Verizon Wireless Petition for)
Waiver of Section 64.402 of the)
Commission's Rules)

WT Docket No. _____

TO: The Commission

STATEMENT IN SUPPORT OF PETITION FOR WAIVER

The Secretary of Homeland Security ("DHS"), Executive Agent of the National Communications System ("NCS"), by his attorneys, hereby submits this statement in support of the above-captioned petition for waiver (the "Petition") filed with the Federal Communications Commission ("FCC" or "Commission") on May 13, 2005.¹

I. STATEMENT OF INTEREST

Established by Executive Order No. 12472, of April 3, 1984, the NCS is an interagency organization that combines the communications assets of 23 Federal departments and agencies to address national security and emergency preparedness ("NS/EP") telecommunications related issues. NCS provides guidance and assistance to the President, the National Security Council ("NSC"), the Homeland Security Council ("HSC"), the Director of the Office of Science and Technology Policy ("OSTP"), and the Director of the Office of Management and Budget ("OMB") concerning the coordination of, planning for, and provision of NS/EP

¹ Executive Order No. 12472 of April 3, 1984, *Assignment of National Security and Emergency Preparedness Telecommunications Functions*, 49 Fed. Reg. 13471 (1984), established the National Communications System. Executive Order No. 13286 of February 26, 2003, § 46(b), 68 Fed. Reg. 10619, 10627, designated the Secretary of Homeland Security as Executive Agent of the NCS. It is in that capacity that he submits this Statement in Support.

telecommunications for the Federal government under all circumstances, including crisis or emergency, attack, recovery, and reconstitution.²

Among its missions, the NCS is specifically charged to “ensure that a national telecommunications infrastructure is developed which: . . . [i]s capable of satisfying priority telecommunications requirements under all circumstances through the use of commercial, government and privately owned telecommunications resources”³ Pursuant to this responsibility, the NCS, through the Office of the Manager⁴ – and in consultation with the NCS Committee of Principals and the Commission – implements and administers several programs supporting a system of priorities and preferences for provision of telecommunications services. These include the Telecommunications Service Priority (TSP) program; the Government Emergency Telecommunications Service (GETS); and the Wireless Priority Service (WPS),⁵ the last of which is implicated by the above-captioned Petition.

² See E.O. No. 12472 § 1(b), as amended by E.O. No. 13286 of February 26, 2003 [hereinafter “E.O. 12472”].

³ *Id.* § 1(c)(2).

⁴ *Id.* § 1(g)(2). Pursuant to section 1(e)(1) of E.O. 12472, the Secretary has designated the Assistant Secretary for Infrastructure Protection as the Manager of the NCS. See 68 F.R. 62308 (November 3, 2003).

⁵ Wireless Priority Service is the programmatic name applied to the wireless priority access service (PAS) as it is administered by the NCS. The Commission adopted rules authorizing the PAS in 2000. See *The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements for Priority Access Service*, 15 FCC Rcd 16720 (2000) (*Second Report and Order* in WT Docket No. 96-86) [hereinafter “PAS Order”]; see also 47 C.F.R. Part 64 Appendix B, *Priority Access Service (PAS) for National Security and Emergency Preparedness (NSEP)*, § 3(b) (Stating that “[t]he Executive Office of the President (EOP) will administer the PAS system.”).

II. BACKGROUND

Verizon Wireless requests a temporary, partial waiver of Section 64.402 of the Commission's rules to permit it to provide code division multiple access (CDMA) wireless priority access service (PAS) voluntarily to authorized Federal, State, and local governments on an expedited basis. Specifically, Verizon Wireless seeks a temporary waiver of that portion of the Commission's PAS rules that requires service providers to support differentiated access to authorized PAS users across five priority levels.⁶

Verizon Wireless states that the network equipment and software it currently uses to provide CDMA wireless services do not possess the capability to distinguish among users in different priority level categories.⁷ Therefore, Verizon Wireless is proposing to introduce CDMA PAS service, commencing in early 2006,⁸ in two phases. Initially, in Phase I, Verizon Wireless would offer single access functionality for all wireless priority service users.⁹ This would continue until a fully compliant solution that recognizes the five priority levels can be engineered (Phase II). Verizon Wireless states that it expects to be able to deploy fully compliant Phase II PAS early in 2007.¹⁰ The requested waiver is necessary to enable Verizon Wireless to begin deployment of Phase I service.

⁶ See 47 C.F.R. § 64.402; 47 C.F.R. Part 64 Appendix B – *Priority Access Service (PAS) for National Security and Emergency Preparedness (NSEP)*, § 3(e) (responsibilities of service providers), § 5 (priority levels and qualifying criteria).

⁷ Petition at 2.

⁸ *Id.* at 5.

⁹ During Phase I, all call attempts by authorized priority users will be placed in the same queue awaiting the next available PAS channel. Accordingly, different priority levels will not be recognized. *Id.* at 2.

¹⁰ *Id.* at 3.

III. DISCUSSION

The NCS has long advocated, and the Commission has recognized the need for, a priority access system to ensure efficient access to wireless communications systems for Federal, State, local, and private sector personnel responding to emergency and disaster situations. Almost a decade ago, the NCS first proposed that the Commission adopt rules to implement such a priority access regime for cellular service providers.¹¹ The Commission, in its *PAS Order*, adopted the PAS framework substantially as proposed by NCS, expanding it to encompass all commercial mobile radio service (CMRS) providers.¹²

Events following the adoption of the *PAS Order*, have served to underscore the critical need for wireless priority access to support responders during emergencies. Following the horrific and unconscionable acts of September 11, 2001, NS/EP responders attempted to use wireless communications yet were unable to do so due to system congestion. Clearly, in such crisis conditions, it would have been desirable to have some priority access service in place, even one that was not fully able to discriminate among various priority levels.

Verizon Wireless provides wireless services to many Federal, State and local governments. The NCS agrees with the Verizon Wireless's characterization of the material facts. The present lack of the software needed to provide PAS on CDMA networks as a practical matter prevent the delivery of fully compliant PAS on Verizon Wireless' system at the present time. The complexities and budgetary constraints associated with the process mean that

¹¹ Petition for Rulemaking of the National Communications System, Cellular Priority Access for National Security and Emergency Preparedness Telecommunications (filed October 19, 1995).

¹² *PAS Order*, 15 FCC Rcd 16720, 16729-30 (¶¶ 19-21).

developing the necessary software will take some time – though, according to Verizon Wireless’ estimate, only approximately eighteen months.

In order to “[i]nsure that at all times a reasonable amount of CMRS spectrum is made available for public use” in conformity with the Commission’s rules, Verizon Wireless states that, in its Phase I deployment, it will employ Hard Public Use Reservation by Departure Allocation (H-PURDA) or an equivalent software algorithm.¹³ As Verizon Wireless notes, NCS has independently modeled and evaluated the set of algorithms, including H-PURDA.¹⁴ Moreover, NCS has adopted the H-PURDA algorithm as an acceptable component of the wireless priority operating standards for CDMA-based systems.¹⁵

NS/EP calls are given priority by allowing them to queue for a radio channel when they encounter an all channels busy condition, whereas normally any call encountering a busy condition is immediately released. The H-PURDA algorithm works by limiting the share of released and available radio channels that can be used to serve queued NS/EP calls. Verizon Wireless’ implementation of H-PURDA will allocate a maximum 25 percent of the radio channels that become available to the queue of WPS subscribers, while maintaining 75 percent of the radio channels for the public’s use. By allocating capacity for non-NS/EP use, Verizon Wireless will insure adequate radio capacity is provided to the public during times of increased NS/EP calling volumes.

¹³ Petition at 6-7 & n.9 quoting 47 C.F.R. Part 64 Appendix B § 3(e)(8).

¹⁴ See *Wireless Priority Service for National Security/Emergency Preparedness: Algorithms for Public Use Reservation and Network Performance*, prepared by Nyquetek Inc. for DynCorp, August 30, 2002 (“CSC Algorithm Study”). A copy of the CSC Algorithm Study accompanied Verizon Wireless’ Petition as Appendix A.

¹⁵ See *Wireless Priority Service (WPS) Industry Requirements for the Full Operating Capability (FOC) for CDMA-Based Systems – Home Location Register (HLR)*, Industry Requirements (IR) Document, Issue 1.0, June 4, 2004, at Section 6.2.2.2.1 (copy available upon request).

NCS believes that Verizon Wireless' use of H-PURDA will help to reduce significantly the impact of its PAS offering on non-emergency CDMA callers. Operational experience of WPS use during Hurricanes Charley, Frances, and Ivan in late summer of 2004, as well as the engineering studies commissioned by the NCS¹⁶ demonstrate that during times of emergency when NS/EP traffic volumes may spike at one particular location, use of the H-PURDA algorithm ensures a relatively high call completion probability for NS/EP users while only reducing call completion probability for the general (non-NS/EP) public by less than two percent.¹⁷

NCS respectfully submits that the public interest is better served by a policy that favors expeditious availability of PAS. Granting the requested waiver, and permitting the two-phased deployment that Verizon Wireless proposes, would substantially accelerate the availability of PAS for key emergency responders in the heavily-populated northeastern portion of the United States, while ensuring that full compliance with the Commission's PAS rules would not be unduly delayed. Under such circumstances, denial of the requested waiver would, to borrow from an old adage, "make the perfect be the enemy of [a very important] good."

In the *PAS Order*, the Commission also addressed the issue of service provider liability. It concluded that providing priority access to authorized NS/EP uses in accordance with the PAS rules would be *prima facie* lawful and not unreasonable discrimination or an unreasonable preference under Section 202(a) of the Communications Act of 1934, as amended.¹⁸ Verizon Wireless requests its operations under terms of the waiver should be afforded the same protection, and the NCS supports that request.

¹⁶ See CSC Algorithm Study, *supra* note 14.

¹⁷ *Id.* at 17-19.

¹⁸ *PAS Order*, 15 FCC Rcd 16720, 16730-31 (¶¶ 22-24).


IV. CONCLUSION


For the foregoing reasons, the Secretary of Homeland Security as Executive Agent for the National Communications System urges the Commission to grant the waiver sought by Verizon Wireless and to include specifically the same limitations on service provider liability as those contained in the *PAS Order*.

Respectfully submitted,

THE NATIONAL COMMUNICATIONS SYSTEM

By:


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*Counsel for the
United States Department of Homeland Security,
Executive Agent of the National Communications System*

Date: June 13, 2005

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*Counsel for the
United States Department of Homeland Security,
Executive Agent of the National Communications System*

Date: June 13, 2005


CERTIFICATE OF SERVICE

I, the undersigned, an employee of the United States Department of Homeland Security, hereby certify that I have caused a copy of the foregoing "Statement in Support of Petition for Waiver" to be served by first class United States Mail, postage-prepaid, this 13th day of June, 2005, to the following:

John T. Scott, III, Esq.
Vice President and Deputy General Counsel
— Regulatory Law

Andre J. Lachance, Esq.
Regulatory Counsel

Verizon Wireless
1300 I Street, N.W.
Suite 400 – West
Washington, D.C. 20005



Eric T. Werner